

REMARKS

By the above actions, the abstract and claim 1, 6 and 11 have been amended, claims 7-10 have been cancelled and new claims 13-30 have been added. In view of these actions and the following remarks, reconsideration of this application is requested.

The original abstract was objected to by the Examiner as possibly containing an incomplete sentence on lines 1-3. However, a review of the abstract indicated that lines 1-3 were a complete sentence, but that some added commas might make this fact clearer. Withdrawal of the objection to the abstract is now requested.

Claims 6 and 11 were rejected as being indefinite due to the use of the term "horizontal." While a review of the claim revealed no indefiniteness and that the usage of "horizontal" is a conventional manner of referring to a horizontal plane. However, in view of the Examiner's position, these claims have been amended to refer to "a horizontal plane." Therefore, these claims should no longer be indefinite and the § 112 rejection thereof should now be withdrawn.

Claims 1-7 were rejected under 35 U.S.C. § 102 as being anticipated by the disclosure of the Letendre patent while claims 8-12 were rejected under 35 U.S.C. § 103 as being unpatentable over the Letendre patent. These rejections are considered inappropriate, at least insofar as they related to the claims as now presented, for the following reasons.

As is expressly stated by Letendre, his two seat halves have "a transverse rotational axis, each half mounted to the seat mount so that the seat halves are capable of rotating at least partially about the transverse axis" (see, Abstract) and the pillow block joint (which is a ball and socket joint) "allows the split seats to rotate about longitudinal axis Z (Fig. 9), in effect, from side to side, about 10°" (col. 4, lines 45-47). In contrast, according to claim 1 of this application, the axes around which the cup elements of the cup joints are movable "are each angled outward" with claim 11 defining this outward angling which is shown in Fig. 5 of the present application and is designated by the angle β . Additionally, claim 2 specifies that "the included angle between the cup joint axes is in a range of 10° to 30°" with the measuring of this included angle being described in paragraph [0035] on page 8 of the present application and is directly related to the outward angling. It appears that the Examiner has confused the direction and range of motion of the seat halves with the claimed angling of the cup joint axes. These are two different things and the express statements made by Letendre make it very clear

that his split seat is constructed very differently from that claimed and clearly is neither anticipative nor even suggestive of the present invention as defined by claim 1 and those claims dependent therefrom, especially claims 1 and 11.

As for the Examiner's conclusions of obviousness with respect to claims 8-12, they are totally unsupported by any factual basis and misapplied case law. That is, the Examiner's discounting of a claim feature as "an obvious matter of design choice" is totally improper. Such a position by the Examiner is, in essence, that one skilled in the art could have done it had they chosen to do so. However, no reason or motivation can be pointed to by the Examiner and the horseshoe shape of Letendre's seat cushions are so different in shape from that claimed by the present application that it is not understandable how one skilled in the art would make such a radical change in shape with no reason to do so. Furthermore, the Examiner's attention is directed to MPEP § 2143.01 where it is stated that:

FACT THAT THE CLAIMED INVENTION IS WITHIN THE CAPABILITIES OF ONE OF ORDINARY SKILL IN THE ART IS NOT SUFFICIENT BY ITSELF TO ESTABLISH *PRIMA FACIE* OBVIOUSNESS

A statement that modifications of the prior art to meet the claimed invention would have been " 'well within the ordinary skill of the art at the time the claimed invention was made' " because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). See also *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1318 (Fed. Cir. 2000) (Court reversed obviousness rejection involving technologically simple concept because there was no finding as to the principle or specific understanding within the knowledge of a skilled artisan that would have motivated the skilled artisan to make the claimed invention); *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999) (The level of skill in the art cannot be relied upon to provide the suggestion to combine references.).

Clearly, merely asserting the conclusion that it would have been obvious to give the seat halves a shape similar to half of a heart shape does not meet the Examiner's burden to establish a *prima facie* case of obviousness, especially when it is based in part on the erroneous conclusion that applicant has not disclose any particular purpose for this shape. To the contrary, paragraph [0036] clearly indicates the significance of this shape stating:

Each of the two seat halves, viewed from above, is essentially in the shape of half a heart having a short and rounded tip which points forward. . . . Thus, the two seat halves 1 offer support to the ischia with the surrounding muscle and soft tissue to an adequate degree, the rounded tips of the seat halves 1 being short, and thus, touching only a minimum area of the inside of the upper leg, in order to ensure leg guidance. This also eliminates pressure points in the genital region.

Thus, this feature that was presented in original claim 8 and is now found in claims 13 & 28 is clearly unobvious based on the teachings of Letendre.

Likewise, the Examiner's reliance upon the case of *In re Aller* relative to claim 11 is misplaced. Firstly, it is pointed out that MPEP § 2144 indicates that:

LEGAL PRECEDENT CAN PROVIDE THE RATIONALE SUPPORTING OBVIOUSNESS ONLY IF THE FACTS IN THE CASE ARE SUFFICIENTLY SIMILAR TO THOSE IN THE APPLICATION

The examiner must apply the law consistently to each application after considering all the relevant facts. If the facts in a prior legal decision are sufficiently similar to those in an application under examination, the examiner may use the rationale used by the court. *If the applicant has demonstrated the criticality of a specific limitation, it would not be appropriate to rely solely on case law as the rationale to support an obviousness rejection.* "The value of the exceedingly large body of precedent wherein our predecessor courts and this court have applied the law of obviousness to particular facts, is that there has been built a wide spectrum of illustrations and accompanying reasoning, that have been melded into a fairly consistent application of law to a great variety of facts." *In re Eli Lilly & Co.*, 902 F.2d 943, 14 USPQ2d 1741 (Fed. Cir. 1990). [Emphasis Added].

Here, not only are the facts in the *In re Aller* case dissimilar to the present case, but applicant has disclosed a particular purpose for the angular value so cavalierly dismissed by the Examiner. The invention in the *In re Aller* case involved a process for the production of a particular carboic acid. In such chemical processes, a change in temperature and/or concentration was considered to an unpatentable modification absence a result that is different in kind, not merely degree. Such facts have no applicability to mechanical structure, and in particular, to such a substantial change in orientation from the purely vertical orientation of Letendre to the forwardly and outwardly inclined orientation of the present application which the Examiner has chosen to treat as a merely an obvious modification without any basis for reaching such a conclusion. Furthermore, the inclination of the present invention was not merely the whim of the inventor,

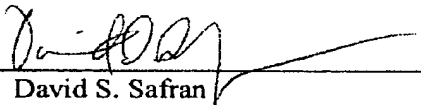
but rather have a clearly disclosed purpose. Paragraph [0013] discloses the reason for providing a forwarding inclination while paragraph [0035], cited above, provides the reason for the outward angling. Nothing in the disclosure of Letendre could cause one of ordinary skill in the part to provide such angling for the seat halves of Letendre. This angling aspect of the present invention is now also present in new claims 19 & 20-23.

Thus, the § 102 and § 103 rejections were and are inappropriate and withdrawal thereof is in order and is now requested.

The prior art that has been cited, but not applied by the Examiner has been taken into consideration during formulation of this response. However, since this art was not considered by the Examiner to be of sufficient relevance to apply against any of the claims, no detailed comments thereon are believed to be warranted at this time.

While the present application is now believed to be in condition for allowance, should the Examiner find some issue to remain unresolved, or should any new issues arise, which could be eliminated through discussions with applicant's representative, then the Examiner is invited to contact the undersigned by telephone in order that the further prosecution of this application can thereby be expedited.

Respectfully submitted,

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